

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAREY ABNEY

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CIVIL ACTION

v.
DAVID DIGUGLIELMO

NO. 06-0461

MEMORANDUM AND ORDER

On January 30, 2006, petitioner filed in this court what purports to be a petition pursuant to Federal Rule of Civil Procedure 60(b) Pursuant to the language of Rule 60(b), such a petition may be treated as either: a new civil action; or, a filing in an already opened civil action. When this matter was originally filed in this court, the Clerk of this Court decided to classify this matter as a new civil action, and the court does not object to this classification.

Petitioner raises arguments that allegedly justify his release from prison pursuant to Federal Rule of Civil Procedure 60(b): It appears to this court that petitioner does not comprehend what a motion pursuant to Federal Rule of Civil Procedure 60(b) is. The purpose of a Rule 60(b) motion is to correct errors of fact only. In the instant petition, petitioner is raising arguments concerning established federal **LAW**; he is not alleging any newly discovered **FACTS** which could not have been previously discovered through due diligence. On this ground alone, the court is inclined to disallow petitioner's Petition for Rule 60(b) relief.

Furthermore, the court notes that the principle of releasing a prisoner from custody because of an allegedly unconstitutional conviction or sentence is governed by the law of habeas corpus, which is part of the Antiterrorism and Effective Death Penalty Act of 1996 (commonly known as "AEDPA"), codified as 28 U.S.C. §§2241-2266. The mere fact that habeas corpus relief is precluded by AEDPA does not mean that an alternative route to the same goal is available by means of a Petition pursuant to Federal Rule of Civil Procedure

60(b). Gonzalez v. Crosby, 125 S.Ct. 2641 (2005); United States v. Baptiste, 223 F.3d 188 (3d Cir. 2000); In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997). The language of AEDPA sets forth extremely clear and extremely strict guidelines concerning the remedies obtainable through it. **AEDPA, and only AEDPA**, is available for relief from incarceration for prisoners who attempt to challenge the constitutionality or legality of their confinement, and “Rule 60(b) applies ... only to the extent that it is not inconsistent with applicable federal statutes...” Gonzalez, 125 S.Ct. 2641 at 2643. Accord, United States v. Baptiste, 223 F.3d 188 (3d Cir. 2000); In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997). This court is of the view that the use plaintiff attempts to make of Rule 60(b) is an attempt to get around the requirements of AEDPA, requirements which are so clear, so unambiguous, and so strict that they are absolutely unmistakable evidence of Congressional intent. As the Third Circuit Court of Appeals noted in Baptiste, if a petitioner could, by means of such a Rule 60(b) petition, get around Congress’s clear intent in adopting AEDPA, the result would be “a complete miscarriage of justice.” Baptiste, 223 F.3d 188 at 190. Accord, Gonzalez v. Crosby, 125 S.Ct. 2641 (2005); In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997).

Accordingly, this day of February, 2006, it is hereby

ORDERED that petitioner is granted **provisional** leave to proceed in forma pauperis, for the purpose of **this Order only**, and, it is further

ORDERED that this civil action is **DENIED WITH PREJUDICE**, and, it is further

ORDERED that the Clerk of the United States District Court for the Eastern District of Pennsylvania shall mark this matter as **CLOSED** in this court for all purposes, including statistics.

S/ J. CURTIS JOYNER
J. Curtis Joyner, District Court Judge

